

CCRM ISSUE 21

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CCRM ISSUE 21 ONLINE

# CUSTOMS COMPLIANCE & RISK MANAGEMENT

JOURNAL FOR PRACTITIONERS IN EUROPE

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Customs Control Club: Opportunities and Challenges in Customs Digitalization

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Editorial

Dear Reader,

What is the most exciting thing about your work for you? For me, it's the fact that in our field we have to constantly stretch our brains. The same sentence of a law that seemed crystal clear one day can be completely unclear the next. In many cases, one cannot be sure that what one reads will be understood in the same way by the law makers, the customs and the courts. For example, UCC Art. 163 "The supporting documents ... shall be in the declarant's possession ... at the time when the customs declaration is lodged." What if the supporting documents are not correct at that time? Can they be replaced later with the correct supporting documents? Or will the correct documents not be accepted because they were not "in possession" at the time of clearance? This question will be addressed in the next issues of the CCRM.

In this issue, we invite you to join the CJEU in finding answers to these questions: What is the definition of furniture, i.e. is a cat scratching post a piece of furniture for the purposes of tariff classification? Can undeclared goods that you discovered after clearance be included in a customs declaration for that shipment (by amending the declaration)?

We also go into a specific area - customs valuation - and discuss some of the issues there. For example: Does the fact that you are sourcing the goods from a non-market economy (e.g. China) affect the transaction value? Should advertising costs be included in the customs value or not? What about transfer pricing and transaction value for branches that are not separate legal entities? What about the application of retroactive discounts and customs valuation? Of course, there are many more aspects that need to be considered, starting with the fact that it might appear that the Customs Valuation Agreement ("Agreement on Implementation of Article 7") is an extension of Article 7, however, there are fundamental differences between the two – "actual value" vs. "actual price" being one of the key ones.

No one will probably dispute the statement that the legal requirements are becoming more and more complex not only due to problems of interpretation but also due to increasing regulation (e.g. 11<sup>th</sup> sanctions against Russia and Belarus package) and constant updates (the long list of legal changes in the EU law news). In addition, customs controls are becoming increasingly strict, with specific national rules and guidelines (e.g. in Lithuania), which traders need to be aware of. What's more, the cost of errors in customs declarations is rising, as the article on rising interest rates reveals. The value of compliance is therefore constantly increasing.

Comprehensive and up-to-date knowledge is needed to manage the many risks that can become very costly problems. How can this - risk management - be done in an appropriate and efficient way? We invite you to look at one part of the risk management process, namely internal audits, and put yourself in the shoes of a customs auditor. Because, as mentioned at the beginning, the other perspective can be invaluable in showing you aspects you have not thought of and changing your view of a particular legal norm or, as in the case of internal audit, of the process.

In this issue, you'll find even more topics: free zones, EU's blocking statute against extraterritorial legislation, the importance of customs brokers, etc. We hope you enjoy this reading and learning experience. And if you feel you are missing discussions with like-minded peers, consider joining the [CPD programme](#).

Best regards,

Enrika Naujoke

Member of Editorial Board



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*Thomas Knebel, CPD programme participant,  
Trade Compliance Officer, Sandvik Group, Sweden*

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## Ukraine customs and trade news June/July 2023

News at a glance: Start of the use of the NCTS system for the internal transit procedure; amendment of the procedure for determining the country of origin of goods; Ukraine prepares for the start of the 5th phase of NCTS; joining the "Customs" programme; and more news!

### START OF THE USE OF THE NCTS SYSTEM FOR THE INTERNAL TRANSIT PROCEDURE

Amendments to the Customs Code of Ukraine entered into force on 28 July. The main novelty is the possibility of using transit declarations and the NCTS system for customs clearance and control of transit movements within the territory of Ukraine.

In addition, the following legislative changes were made:

- The possibility to use the simplifications set out in the Convention on Common Transit for internal clearance of goods;
- Compulsory sealing of vehicles, containers or individual packages when they are placed under the transit procedure;
- Introduction of new transit simplifications "authorised TIR consignor" and "authorised TIR consignee";
- Clearly defined cases where a provisional declaration is not lodged;
- The possibility of priority customs clearance for goods moving under the Convention on Common Transit;
- Some other new provisions that clarify and specify the rules and procedures.

### TERMINATION OF THE "GRAIN" DEAL

On 17 July, the Russian Federation announced the termination of the "grain" deal. Representatives of Russia said the agreement did not justify its purpose of reducing the risk of famine in the poorest countries in Africa, Asia and Latin America. UN Secretary-General António Guterres called on Russia to return to the agreement, saying that the most vulnerable sections of the population would suffer from rising market prices.

In addition, the aggressor continues to shell Ukrainian ports and grain infrastructure. There is also a high risk of civilian ships being attacked in the Black Sea.

Ukraine is trying to solve the grain problem in other ways, but restrictions on the export and transit of agricultural products by several European countries are complicating the process. The Ukrainian government hopes that these restrictions will be lifted as soon as possible.

### AMENDMENT OF THE PROCEDURE FOR DETERMINING THE COUNTRY OF ORIGIN OF GOODS

Ukraine continues to work on aligning customs legislation with EU requirements. Parliament adopted a law aligning the provisions on the following with the EU Customs Code:

- The purpose of determining the non-preferential origin of goods;
- The specifics of determining the origin of accessories, spare parts, tools, neutral elements and packaging;
- A list of goods wholly manufactured in that country;
- Criteria for the sufficiency of processing of goods manufactured using materials of foreign origin;
- A list of simple operations;
- Procedures for verification of certificates of origin of goods by customs authorities after completion of customs clearance.

This law is not only the next step on the road to EU accession, but also opens up new business opportunities, especially given the start of the transitional rules of origin between Ukraine and the EU (expected in autumn).

### **UKRAINE PREPARES FOR THE START OF THE 5TH PHASE OF NCTS**

As of 1 September, Ukraine will start using version 5 of the NCTS system. The previous version of the system (NCTS Phase 4) will no longer accept declarations. At the same time, it will be in operation for a certain period of time (about two months) to complete and terminate operations started before 1 September 2023.

For businesses currently using the NCTS, the transition to phase 5 of the NCTS means that only certain aspects of completing transit declarations will change, particularly in the provision of data. For example, businesses will be able to declare goods not only for individual commodities, but also provide the information at the house consignment level. This approach is important for groupage consignments.

At the same time, all rules and principles for the application of the common transit procedure and transit simplifications remain relevant and valid.

The transition to the NCTS Phase 6 system is scheduled to take place by June 2026.

### **JOINING THE "CUSTOMS" PROGRAMME**

Ukraine ratified the agreement with the European Union on its participation in "Customs", the Union's customs cooperation programme. This is another important step towards deepening cooperation with EU customs authorities.

The programme provides in particular for the following:

- Intensification of the exchange of information and data between customs authorities;
- Development and operation of European electronic systems;
- Access to documents in customs matters;
- Research and innovation activities.

### **LIFTING THE BAN ON SUGAR EXPORTS**

In the last issue, we reported that Ukraine's Cabinet of Ministers had banned sugar exports from Ukraine and set a zero quota from 5 June to 15 September 2023.

However, in July the zero quota was lifted and a quota of 20,000 tonnes was set until 15 September. This decision was taken to stabilise prices on the market, especially in Romania, the largest importer of Ukrainian sugar.





**Jonas Sakalauskas**

Partner, Attorney-at-law, Law firm "Averus", Lithuania

[About the author](#)

LAW

# The Zes Zollner Electronic case: exploring the scope of amending customs declarations

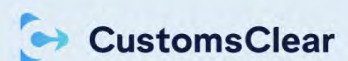
In a recent ruling, the Court of Justice (the Court) delivered its decision in the case of Zes Zollner Electronic ([C-640/21](#)), addressing the issue of amending customs declarations and the consequences of failing to declare the correct quantity of goods. The case involved a Romanian company, Zes Zollner Electronic (ZZE), which declared only half of the actual quantity of goods received, resulting in a customs infringement.

**BACKGROUND**

ZZE faced fines from Romanian customs authorities after it was discovered that the company intentionally removed

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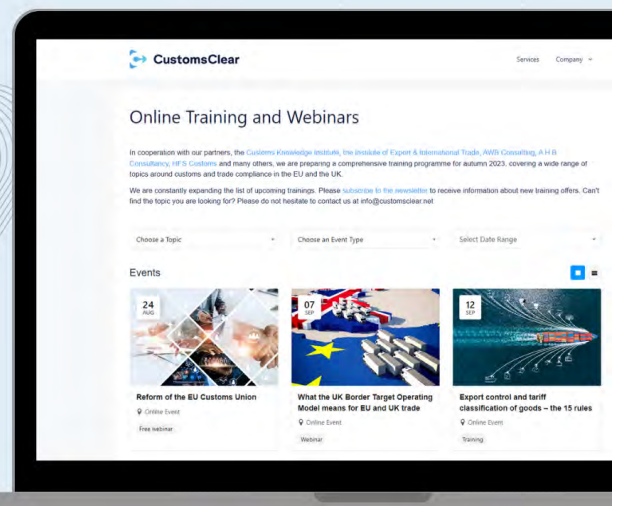
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CLASSIFICATION, VALUATION, ORIGIN

## CJEU: Cat scratching post - is it a piece of furniture (CN 9403)?

Fertilisers, honey, car seat parts, inflatable couches, etc. These are just a few of the goods on the classification of which the Court of Justice of the European Union (CJEU) has recently ruled. In the present case [1], the question was whether a cat scratching post could be classified as other furniture and parts thereof (heading 9403 of the Combined Nomenclature (CN)). Or is furniture understood to mean objects intended only for human use?

### FACTUAL SITUATION

Company PER Pet BV lodged customs declarations between 12 September 2016 and 28 August 2017 for the release for free circulation of articles for cats called 'cat scratching posts' (Goods), which were classified under two subheadings of CN heading 4421.

The Dutch customs authorities (**Customs**), after a check in 2017, decided that the Goods should be classified under CN subheading 5609 0000 00 or 6307 9098 90 and not under CN subheading 4421, and ordered PR Pet BV to pay customs duties of €10,699.26 (Customs decision of 28.12.2017).

[Read continuation on Customs Clear \(€\)](#)

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# PRICING

CLASSIFICATION, VALUATION, ORIGIN

## Customs valuation – the particularities of different countries

Customs valuation is one of the most problematic areas of customs, whatever the country or territory. Experts from different continents - from North and South America to Europe and Asia - confirmed this at the [16th Authors' Meeting](#). The following is a summary of the main conclusions of this event. The topics covered: discounts, advertising costs, “fair prices” vs transaction value, the arm’s length principle when moving stock between branches, sourcing goods from non-market economies, advance valuation rulings, etc.

### THREE “AHA” MOMENTS FROM A NEW BOOK ON CUSTOMS VALUATION

*Monika Bielskiene, Attorney at Law, PwC Lithuania*

Monika shared some great news from the world of customs valuation. The book “[The Customs Valuation Agreement: Origin, Standards and Interpretations](#)” by Mark Neville has been published. Its upcoming publication was discussed during the 3<sup>rd</sup> Global Webinar: Books on Customs in December 2022 (watch [recording here](#)). Monika highlighted her three “aha!” moments from the book.

First, on the legal status of Article 7 of the General Agreement on Tariffs and Trade (1947), i.e. it being “dead letter” in any conflict with Agreement on Implementation of Article 7 of the GATT (Customs Valuation Agreement). Ironic, as at least judging from its official name (“Agreement on Implementation of Article 7”) it could appear that Customs Valuation Agreement should be an extension of Article 7. However, there are fundamental differences between the two – “actual value” vs. “actual price” being one of the key ones.

Second, differences between developed and developing countries when it comes to customs valuation. Developed countries tend to rely more on the commercial practices and documentation of the importer. Developing countries feel that they face a much higher level of fraud and therefore need to tighten controls and have external tools to challenge the importer's documentation.

Third, the “first sale” doctrine. It still applies in the US, while many other countries, including the EU, have moved to the “last sale” doctrine, i.e. a sale that takes place just before the goods enter the importing country. Mark Neville's



book demonstrates with incisive analysis and argumentation that the "first sale" doctrine has a strong backing in the Customs Valuation Agreement. However, it also poses practical problems (e.g. the "clear destination" test).

### **PURCHASER IN CANADA: A SMALL ADDITIONAL PROVISION IN THE NATIONAL LEGISLATION**

*Peter Mitchell, Chartered Professional Accountant, Peter L. Mitchell Professional Corporation, Canada*

Peter highlighted a small additional provision in the Canadian legislation that does not appear in the Customs Valuation Agreement. According to Ss. 48(1) of the Customs Act the value for calculating duty is the transaction value of the goods if they are sold for export to Canada to a purchaser in Canada and the price paid or payable for the goods can be determined. We have three requirements that must be met in order to apply the transaction value method:

- The goods are sold for export to Canada;
- The purchaser in the sale for export to Canada is the purchaser in Canada; and
- The price paid or payable for the goods can be determined.

Meanwhile, the Agreement contains only two requirements relating to the price paid or payable and that the imported goods are sold for export to an importing country. The words "purchaser in Canada" are that one small additional provision in question.

This additional provision adds complexity to the already complex scheme of application of the transaction value method, particularly where the chain of sales is concerned. In such cases, disputes may arise as to which of these sales should be considered the sale for customs valuation purposes. When importing goods into Canada, it is important to consider not only which transaction is used as the basis, but also whether the purchaser of that transaction meets the requirements of Canadian law.

### **BRAZIL: THE REQUIREMENT TO PROVIDE COMMERCIAL CORRESPONDENCE**

*Eduardo Leite, Attorney at Law, Professor, Aduaneiras - Cursos e Treinamentos, Brazil*

Among other things, Brazil establishes very specific requirements for proof of sale when using the transaction value method. Brazilian regulations require importers to provide commercial correspondence (including emails) with counterparties to prove that the party can use the transaction value method. This is a very delicate point which creates new problems, as sometimes the parties do not send emails concerning the price. After receiving the declaration and no proof of correspondence, the customs authorities compare the declared value with the value of similar goods found in open sources (marketplaces and e-commerce platforms) or in internal statistics (exclusive access to the authorities). If the prices are different, they reject the declared customs value and impose penalties on importers.

### **THE NEED TO INCREASE TRUST BETWEEN CUSTOMS AND BUSINESS IN UKRAINE**

*Dr. Ilona Mishchenko, Associate Professor at the Maritime and Customs Law Department, National University "Odessa Law Academy", Ukraine*

In Ukraine, there are no problems with determining customs value, as the legislation and procedures are quite clear. The problem is to convince the customs authorities that the declared customs value is correct. In most cases, the customs authorities doubt the correctness of the customs value. But often their doubts are not confirmed. Of course, from time to time they come across an underestimation of the customs value. However, the number of such undervaluations is much smaller than the number of cases where the customs authorities reject the customs value. In these cases, the customs authorities adjust the customs value upwards. Unfortunately, this tool - adjustment - is not used very effectively. The vast majority of adjustment decisions are appealed. The courts usually rule in favour of the importers. According to official data for 2022, importers won 77% of customs value cases. It should be also noted that if the amount of additional duties on the adjusted customs value is not very high, no appeal is made, even if the importer is confident of his case.

What can be done about these problems? Approaches to implementation and interpretation of the law should

be changed and customs officials should be made aware that their rights and powers are not unlimited. Perhaps something needs to be changed in the risk assessment system, particularly with regard to the profile of customs valuation. Finally, every effort should be made to increase the level of trust between customs and business.

### **“FAIR PRICES” VS TRANSACTION VALUE IN BULGARIA**

*Georgi Goranov, Attorney at Law, Georgi Goranov Law Office and Unitax Consult Ltd, Bulgaria*

Bulgaria, as a member of the EU, has to apply common customs legislation along with the rest of the member states. According to Article 3(a) of the Treaty on the Functioning of the EU, the Union has exclusive competence in the field of Customs Union. This means that EU legislation on customs takes precedence over any national legislation in this area.

However, two years ago significant legislative changes were made at the national level, in particular to the Bulgarian Customs Act. These were the result of a preliminary ruling by the Court of Justice of the EU (CJEU) in case C-291/15 EURO 2004. *Hungary Kft. v Nemzeti Adó- és Vámhivatal Nyugat-dunántúli Regionális Vám- és Pénzügyőri Főigazgatósága*. In this judgement, the CJEU recognised the right of customs authorities to initiate the procedure for challenging the declared customs value where the declared transaction value is considered unreasonably low in comparison with the statistical average of purchase prices.

These changes do not correlate well with the relevant European legislation, and this raises many questions: Is the application of these new provisions legitimate? What was the reason for the Bulgarian legislator to take such steps? What are the possible consequences? For answers and more details, see the article [“Fair prices’ vs transaction value in Bulgaria”](#) by Georgi Goranov published in the CCRM Issue 20 (2023).

### **GREY AREA: THE ARM'S LENGTH PRINCIPLE WHEN BRANCHES ARE INVOLVED**

*Zandra Horgan, Co-Founder, HFS Accountants, Ireland*

After Brexit, many customers trading between the EU and the UK requested that goods be delivered DDP (Delivered Duty Paid). This Incoterms term means that the seller is responsible for customs clearance and payment of import duties and taxes. In most cases, however, this was not possible because indirect representation was required. Only a few customs agents were willing to take on this work. As a result, companies tried to set up entities in both jurisdictions (EU and UK) to act as importers.

Then companies faced another problem - determining the customs value. There is clear guidance from the OECD on transfer pricing. Article 9 of the OECD Model Tax Convention describes the rules for the arm's length principle. It states that transfer prices between two jointly controlled enterprises must be treated as if they were two independent enterprises; and therefore, they have to agree on prices applying arm's length principle. However, Article 9 refers specifically to subsidiaries and two separate enterprises. If you have a branch, you don't really have a separate legal entity. So there is a certain grey area. Let's say we have the stock movement for import clearance in the EU and the valuation that is used here. As there is no clear guidance on transfer pricing for branches, is the transaction value acceptable? Is there a risk for these branches in the EU in terms of stock movements and undervaluation? These questions still need to be answered.

### **SPECIAL DISCOUNT, MADE IN ISRAEL**

*Omer Wagner, Attorney at Law, Indirect Taxation, PwC Israel*

With regard to discounts, Israel imposes many conditions and obstacles for a discount to be accepted, in a way that may deviate from the spirit of the Customs Valuation Agreement.

The Israeli Customs Authority has published a Customs Valuation Procedure. The Procedure is not considered a binding law or regulation, but expresses the formal position of the Authority. The Procedure relates to discounts and seeks to minimise the cases in which a discount is recognised. It includes three main conditions:

- Discounts for other reasons;

- **Conditional discounts;**
- Free of charge goods.

For example, the first condition: "The discount is directly related to the goods and has been granted for imported goods. Discounts granted for other reasons, such as goods imported in the past or annual sales targets, will not be recognised for valuation purposes". This section tries to track the reason underlying the discount, whether it is for the current shipment or something historic.

There seems to be a bit of a confusion here between a relevant factual question - whether the current delivery contains a discount - and a rather irrelevant incidental question - what was the reason for the discount. A good example for this pendulum is an Israeli court judgement concerning discounts on refrigerators. In this case, the price for buying 100 refrigerators in the first round was ILS 1,500 per unit. If more than 100 units were purchased in one month, the price for the next 10 refrigerators in the second round in the following month is 1,000 ILS per unit. The valuation question was about the second round, the 1,000 ILS per unit. The Authority considered that the goods should be valued at ILS 1,500 and not ILS 1,000 because it was a retroactive discount granted for the first round, a discount granted for other reasons, namely for previous purchases, and not for the second round.

The court rejected the Authority's position and confirmed the discount. The court noted that the prices between the parties and the discounts are influenced by many reasons, including previous purchases. The court emphasised that the correct view should consider the discount as given on the second round, and not as retroactive to the first round.

Read more in the article "[Special discount, made in Israel](#)" by Omer Wagner published in CCRM Issue 20 (2023).

## **DISCOUNTS IN THE EU: DIFFERENT COUNTRIES - SIMILAR ISSUES**

*Evguenia Dereviankine, Attorney at Law, Partner, PARADIGMES Cabinet d'avocats, France*

At the Author's Meetings, we usually learn about the variety of customs problems and the approaches and solutions used in different countries. At the same time, we notice that different countries, which may even be on different continents and have different legislation, often face the same challenges. Evguenia also noticed such a case. She confirmed the great similarity in the approaches to the impact of discounts on the customs value of goods in Israel and the EU. The idea is that retroactive discounts should not be taken into account unless they are specified in the contract and the exact amount of the future discount can be calculated at the time of importation. In this respect, the French ICC branch has done a lot of work on benchmarks of how the situation is handled in different countries. For example, agreements could be signed with customs before importation, explaining how future discounts will be applied, taking into account provisional, but not precise, amounts of future discounts. The issue is really crucial for the EU, so various events, conferences and symposiums on the topic are being held in the Member States.

## **NEW TRENDS, OLD PROBLEMS – INSIGHTS FROM COLOMBIA**

*Juan David Barbosa, Attorney at Law, Colombia*

Firstly, Juan gave an example of how different countries use opposing approaches to solve similar customs valuation problems. He mentioned the case of whether advertising costs should be included in the transaction value of goods. The Colombian court ruled that advertising costs were not part of the transaction value. These costs are of a different nature to royalties. Article 8 of the Customs Valuation Agreement does not explicitly state that these costs must be added to the import price. Meanwhile, the Korean court has ruled to the contrary, stating that advertising costs should be included in the transaction value.

Secondly, in Colombia and other countries in the Andean region, transfer pricing and e-commerce are also the subject of much discussion. It should be noted that in these countries the customs value is based on the CIF value of the goods, unless certain exceptional goods are imported.

Thirdly, the Andean Community countries are working on advance valuation rulings aimed at minimising customs valuation problems. Implementation of these rulings is expected to take between 5 and 10 years due to the many discussions and technical difficulties involved.



## SOURCING GOODS FROM NON-MARKET ECONOMIES AND CUSTOMS VALUATION

*Weronika Bukowski, Counsel, the International Trade Group of Crowell & Moring, the USA*

Weronika drew attention to the recent decision of the United States Court of Appeals for the Federal Circuit in Meyer Corporation, U.S., v. United States. The company sought to establish the dutiable value of its cookware using the “first-sale” price from affiliated manufacturers to affiliated distributors. It ran up against Customs’ requirement to prove that these first sales were not only at arm’s length, but were also unaffected by China’s status as a non-market economy. The trial court upheld Customs’ decision on the latter point. However, the Court of Appeals clarified that there is no basis in the statute for Customs or the court to consider the effects of a non-market economy on the transaction value and vacated and remanded for the court to reconsider whether Mayer may rely on the first-sale price.

Weronika also shared some thoughts on another topic – the allocation of assists in the global supply chain. There are many complex aspects to consider here: Who is the manufacturer when the customer provides many assists? How do you allocate them on a global scale? Is there a sale here? The tasks in this area are becoming more and more demanding and it is necessary to keep an overview.

## ADVANCE VALUATION RULINGS – A GOOD TOOL FOR RISK MANAGEMENT?

*Enrika Naujoke, Co-Founder, CustomsClear, Lithuania*

Enrika shared statistics from the Lithuanian customs report. In 2022, companies paid EUR 31 million in additional taxes, interest and fines as a result of simplified customs audits, of which EUR 19 million were due to customs valuation errors. Therefore, it can be stated that customs valuation was the biggest financial risk area for businesses in 2022.

How can this risk be managed? One of the possible tools is the BVI (Binding Valuation Information) decision. This tool is not yet available in the EU, it is still a work in progress (it is already available in the UK). Learn more about it in the article "[Binding Valuation Information \(BVI\) decisions in the EU: the pros and cons](#)" by Georgi Goranov, CCRM Issue 19 (2023).

Considering BVIs, two questions arise about binding information decisions in general. Firstly, are they popular? According to Lithuanian customs statistics, only 34 BTIs and no BOIs were issued in 2022. It is therefore questionable whether companies will actively use BVIs. Secondly, how much legal certainty does the binding information decision provide? In the article "[Harley-Davidson case highlights limits of binding \(origin\) information in Union customs law](#)" (CCRM Issue 20, 2023), Jonas Sakalauskas concludes that the case in which the Commission revoked BOI decisions highlights the importance of complying with Union customs law and that legal certainty is limited when relying solely on such decisions.

The advertisement features a laptop on the left displaying a slide titled 'Importance' with a table of customs duty rates. To the right, the CustomsClear logo is at the top. Below it are three buttons: 'Video course', '3 h.', and '545 €'. The main title 'Customs valuation in the EU' is prominently displayed, with a 'Learn more' button below it.

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**Omer Wagner**

Advocate, Indirect taxation, PwC Israel

[About the author](#)

CLASSIFICATION, VALUATION, ORIGIN

**Special discount,  
made in Israel**

**BRIEF**

The State of Israel is a member of the WTO and complies with the Valuation Agreement. However, with regard to discounts, the State imposes many conditions and obstacles for a discount to be accepted, in a way that may deviate from the spirit of the Agreement [1].

**DISCUSSION**

**The transaction value**

The basic rule for customs valuation in Israel is similar to the WTO Valuation Agreement, namely: "the transaction value" [2]. The relevant Israeli Law states [3]: "*The transaction value is the price paid or payable for the goods, when they are sold for export to Israel ... plus the expenses and amounts detailed ...*". Thus, until here, it appears that if a discount is granted, and reflected in the transaction price, the price after discount should constitute the price for valuation purposes.

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## CLASSIFICATION, VALUATION, ORIGIN

# Supplier's declaration in preferential trade: when to use it?

Global trade based on preferential treatment offers benefits to its participants. The main one is a reduction in financial costs due to the application of reduced tariff rates when the goods have a preferential origin. In other words, if a product originates in one country and is sold to another country with which there is a preferential trade agreement, the product may be subject to a reduced or even zero duty rate. However, the mere fact that the goods originate in a particular country is not enough to qualify for such benefits. The preferential origin of the goods must be proven, so that the customs authorities do not suspect any manipulation or fraud on the part of importers. Each specific preferential trade agreement sets out acceptable ways of proving the preferential origin of goods. A supplier's declaration is one of the means of proof. Let us find out what it is and when it can be used.

### WHAT IS A SUPPLIER DECLARATION AND WHY IS IT IN USE?

*A complete article is available in the online version of the journal. To read the full article, please visit the website of the Customs Clear platform.*

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CUSTOMS BROKERS

# Customs brokers: Growing importance in the US. The opposite in the EU?

The United States is strengthening the role of customs brokers as professionals by introducing a professional development requirement (which will come into force on 24 July 2023), stressing that this will help improve trade compliance and revenue protection and allow brokers to act as an additional layer of security to prevent illicit goods from entering US commerce. In the meantime, EU customs brokers fear that the EU Customs Reform and the draft new Customs Code could signal the end of their profession.

## THE UNITED STATES: CONTINUING EDUCATION FOR LICENSED CUSTOMS BROKERS

In the US, a prospective customs broker must pass a broker exam administered by the US Customs and Border Protection (CBP). The exam is designed to determine the individual's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters.

Subsequently, the individual submits an application for a broker's license. If CBP finds that the applicant is qualified,

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**Omer Wagner**

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CUSTOMS BROKERS

# Who gave you the customs agent's licence?

## Suspension of a customs agent's licence in Israel

Recently, in May 2023, the Israeli court upheld the customs manager's decision to suspend a customs agent for a few months [1]. The agent appealed to court, but his petition was rejected.

### HOW CAN A CUSTOMS AGENT REGISTER IN ISRAEL?

Before diving into the court decision, first let's explain the main conditions for a customs agent in Israel ("agent"). The Law [2] provides these requirements for an agent:

- An Israeli resident;
- An adult (over the age of 18);
- With at least high school education;
- Passing an internship period of at least two years with a veteran customs agent;
- Graduating the governmental exams;
- Without serious criminal conviction, was not expelled from civil service, police, army.
- A corporation can register as a customs agent if it is incorporated in Israel and has at least one licensed

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**Assoc Prof Dr Momchil Antov**

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**CUSTOMS BROKERS**

# Competencies of a customs broker: insights from a workshop

Customs matters are complex and little known to the general public. This makes customs brokers an indispensable part of international trade, and with their knowledge they can greatly help their clients. What key competencies should customs brokers have? What additional key skills should they have? And what can we do to improve the competencies of customs brokers? These three questions were dealt with in a workshop organised by [Customs Knowledge Community \(CKC\)](#). Let's have an overview of the results.

## BACKGROUND

The customs control system has established itself worldwide as one of the most dynamically developing systems. The main directions of its development are related to the increased use of information technologies, the simplification of customs control procedures to facilitate legitimate trade and the development of modern methods of risk assessment and analysis. This dynamic makes it necessary for the competences of customs agents to be regularly adapted to th

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More information: <https://www.customsclearance.net/en/courses/eu-customs-clearance-basics-for-container-shipping-logistics-industry>



**Lucie Cordier**

Lawyer, Custax & Legal, France

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**Erwan Guerineau**

Intern, Custax & Legal, France

EXPORT CONTROL, SANCTIONS

# The European Union's blocking statute against extraterritorial legislation: an effective instrument for protecting the EU's economic interests?

The recent ECJ judgment (July 2023) highlights the obsolescence of the legislative framework established by the Commission in 1996. In theory, the European Union's blocking statute makes it possible to protect European companies against laws with extraterritorial reach. However, it appears that its scope and use have not achieved the objective initially set, namely, to neutralize the effects of foreign legislation.

The [Council Regulation \(EC\) No 2271/96](#) of 22 November 1996 *protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom* [1], was adopted on November 22, 1996.

Its aim is to protect European Union nationals as well as "any legal person" [2] within the Union against the effects of an administrative, judicial, or arbitral decision based on an extraterritorial sanctions' regulation [3]. The extraterritorial application of a rule can be defined as "the situation in which the State that originated the rule purports to apply it to a person - individual or company - of foreign nationality in order to punish acts committed outside the territory of that State".

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More information: <https://www.customsclearance.net/en/courses/compliance-and-export-control-structure-and-implementation>





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## Meet some of the lecturers



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CEO of Anthony Buckley  
Consulting Ltd., former  
Head of Irish Customs, Ireland



**Jessica Yang**  
Customs & Trade Compliance  
Specialist at Takeda,  
Switzerland/the United Kingdom



**Patrick Nieveler**  
Manager Customs & Excise  
Tax at BMW, Founder & CEO of  
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EXPORT CONTROL, SANCTIONS

# National sanctions against Russia and Belarus: Lithuania tightens controls

The enforcement of international sanctions in Lithuania continues to tighten. The new strengthened national regime entered into force on 5 June 2023 [1]. In July 2023, an additional requirement will come into force: manufacturer's declarations will be required for the transit by road through Russia or Belarus of non-dual-use goods with commodity codes corresponding to those included in the newly created national dual-use goods list. The new requirement will apply to all goods crossing Lithuanian borders, including those exported or re-exported from other EU countries.

The requirement of manufacturer's declarations will be introduced in two phases:

- from 3 July 2023, when declaring goods to the Lithuanian customs for the export procedure and for re-export in Lithuania;
- from 17 July 2023, the manufacturer's declaration will also be required at customs offices at border inspection posts acting as customs offices of exit or destination (exports and re-exports from other EU countries are affected).

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**Jurgita Bartninkienė**

Director, UAB "Muita", Lithuania

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OVERVIEWS AND COMMENTS

## Rising interest on duties = Increasing costs of errors in customs declarations

Those who pay their mortgages have become accustomed to paying higher interest rates. However, this applies not only to mortgages, but also to other interest and late payment charges that we may not think about in practice. For example, increased interest on customs duties, which are additionally charged by customs authorities when discrepancies are found after customs clearance.

The amounts charged due to errors are significant, as we can see from the report on the activities of the Lithuanian Customs: simplified customs audits alone have resulted in an additional charge of €31 million in 2022 [1]. So the cost of errors increases significantly due to rising interest rates.

### THE PRACTICAL SITUATION

For example, the estimated customs debt is €74 000, the daily interest rate is 0.01507% (5.5% annual rate), the number of days overdue is 365. The amount of interest payable is €4 070.

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The advertisement features a blue background with a laptop on the left displaying a slide titled '8. Methodik und Didaktik'. To the right of the laptop, there are three white buttons: 'Video course', '80 h. (learning time)', and '985 €'. Below these buttons is a large white button that says 'Learn more'. The CustomsClear logo is in the top right corner of the ad area.

More information: <https://www.customsclearance.net/en/courses/zertifikatsstudiengang-zollmanager>





**Enrika Naujokė**

CEO, CustomsClear, Lithuania

[About the author](#)

OVERVIEWS AND COMMENTS

# Put yourself in the shoes of a customs auditor (and why you should) Part I

What are the objectives of a post-clearance customs audit (PCA)? What does “a desk audit” mean? What are the obligations and rights of auditees? And generally, from a business perspective, isn't it more important to get border controls right for goods to smoothly cross the borders than to care about PCAs? If you don't know the answers, continue reading this article, which gives an overview of the principles of customs audit-based controls around the world [1]. Understanding these will help you better understand how customs auditors think and work. This is important to be prepared for customs audits and also to develop an appropriate internal procedure for auditing your company's compliance with customs and trade regulations, which is an effective measure to prevent costly errors or to detect and correct them in a timely manner (before the customs audit).

## THE VALUE OF AN INTERNAL AUDIT AS A MEASURE TO PREVENT COSTLY ERRORS

The value of an internal audit can be determined by a risk assessment, e.g. what can be the "price" of an error in the customs declaration? Here are some points to consider:

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More information: <https://www.customsclearance.net/en/courses/customs-risk-management>



**Mark Rowbotham**

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OVERVIEWS AND COMMENTS

## Free zones: types and benefits for business

Free zone development differs from one country to another. Different countries use different types and concepts of free zones. In some countries, Free Zones are developed to stimulate incoming trade, as in the case of the US Foreign-Trade Zones (FTZs), while in others, such as developing countries, they exist to stimulate export-oriented trade. In this article, we overview the various types of free zones and the benefits they provide for business\*.

### BACKGROUND

For a number of centuries, governments, emperors, kings, queens, rulers and presidents have been providing traders and investors with special sites offering respite and relief from normal import-export duty and tax regimes and regulations in return for a steady stream of much-needed revenue for the national coffers. Before modern times, such places were concentrated in the Mediterranean basin, at Delos in Greco-Roman times, and in Venice, Genoa and Marseille during the Middle Ages, as well as many ports in the German Hanseatic League. By the 19th century, they had spread to Southeast Asia, especially Malaya. However, it was not until the latter half of the 20th century that so-called “free zones” made their mark as deliberate tools of economic development, most notably in China in 1979

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OVERVIEWS AND COMMENTS

# What does “trade facilitation” really mean?

**Standardization and harmonization are essential aspects of trade facilitation**

With the increase in globalization and economic interdependence between countries, trade facilitation has become a critically important issue for the global economy. Consequently, trade facilitation has been addressed in all its possible meanings, in all fields and scopes, and by all institutions that are somehow linked to international trade, composing a true **Tradeweb** of players with specific roles and common objectives.

In this chain of relationships, it is possible to verify that efforts are being made to **strengthen cooperation** between Governments, Inter-Government agencies, Customs and other Government Agencies, Businesses, Institutions, Associations and Academia.

### A FEW INTRODUCTORY REMARKS

First of all, in the perspective of international agreements and conventions, **trade facilitation refers to the set of measures** and policies aimed at reducing obstacles to international trade, including tariffs, excessive regulations and customs bureaucracy. On the other hand, some measures, instead of reducing procedures, impose additional layers to increase safety, compliance and the fluidity of cross-border transit.

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Students at the at the D. A. Tsenov  
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STUDENTS' SECTION

## Customs Control Club: Opportunities and Challenges in Customs Digitalization

For the second year, students from the Department of Control and Analysis of Economic Activities at the D. A. Tsenov Academy of Economics, Svishtov, Bulgaria worked in the Customs Control Club formed at the Department. Participation in the club was voluntary, and in the second season 10 students actively participated.

The work of the club was under the slogan "Customs in the digital world" and several issues were discussed such as what are the pros and cons of digitalization as a process, the level of digitalization in Customs control around the world, in the EU and Bulgaria, the opportunities for digitalization of import, export and transit processes, etc. As a result of the student's efforts, a summary essay on "Opportunities and Challenges in Customs Digitalization" was prepared [1].

### INTRODUCTION

Digitalization is applicable in every sphere of the global economy and becomes an integral part of business functioning and everyday life in general. Its initial development at the end of the 20th century was primarily due to innovations in the technology sector and if at that time the use of digital solutions was a luxury, today it is an undeniable necessity. Global processes such as climate change, scarcity of resources and difficult access to them, the health crisis in 2020, etc. determine the high pace of its development, the main objective of which is to reduce their negative impact. The implementation of innovative digital solutions leads to better use of global resources, environmental protection through the development of the circular economy, modernization of supply chains, cost minimization, etc.

Customs are an indispensable part of world trade and they play an increasingly important role in the proper implementation of these policies as regards the movement of goods across international borders. Their digitization is increasingly urgent, and in the EU the digitalization of Customs controls aims to strike a balance between easing customs formalities for legitimate trade and exercising effective controls to protect the EU's financial and economic interests, the environment, business and EU citizens.

**The digitalization of Customs is a complex and multi-layered transformation, which on the one hand provides many opportunities to optimise the work and structure of administrations, but also presents Customs with many challenges in the digital transition process.** Defining the benefits and possible threats gives a clearer picture of the importance of Customs digitalization. Without claiming to be exhaustive, and because individual digitalization processes are at different stages of their development, implementation and operation, the main opportunities and challenges for Customs can be summarised as follows.

- **Electronic data processing and paperless environment**



With the entry into force of Regulation (EU) No 952/2013 of the European Parliament and the Council laying down the Union Customs Code (UCC), the communication between Customs authorities and economic operators (EOs) is to be carried out electronically. This means that not only customs declarations are lodged, processed and finalised using customs information systems, but the overall communication, for example, a request for an authorisation of a special arrangement, is also done electronically. This indirect way of "communicating" with the Customs authorities does not imply personal contact, and that minimizes the opportunities for subjectivism and corrupt practices. On the other hand, the development of functional electronic systems is a serious challenge for Customs, as this requires a lot of time and significant financial resources, leading to the phased implementation.

Work with electronic documents is regulated by Decision No 70/2008/EC of the European Parliament and of the Council on a paperless environment in Customs and trade. The full implementation of this solution enables significant facilitation for the business in its interaction with Customs authorities as it saves time, resources and minimises the possibility of important information being lost or data being deliberately manipulated in a paper document. This process has not yet been finalised, although significant progress has been made. However, several customs documents are still issued and processed only on paper, for example, the EUR.1 movement certificate. Other documents, e.g. the TIR Carnet, are used both in electronic and paper form. In practice, the process of introducing a fully paperless environment in trade is a very complex process that has been largely digitalized by Customs, but efforts are also needed from the other parties involved, such as economic operators and other government structures involved in the import and export of certain types of goods.

- **Process automation for import, export and transit of goods**

Communication in an electronic environment and the use of electronic documents are only one stage of the overall digitalization of Customs. Once the customs declaration has been lodged electronically, a Customs officer must process it to trigger the declared customs procedure. This includes carrying out mandatory documentary checks and validations to establish that the operation complies with the applicable customs formalities. With the introduction of new versions of European and national customs systems for the import, export and transit of goods, these checks are becoming increasingly automated. When a non-compliance is detected, the systems notify the declarant automatically and the intervention of a customs officer is necessary when a higher risk to the shipment is identified. Process automation provides opportunities for faster processing of declarations and triggering of regimes, minimising errors that are made when completing declarations, freeing customs officers from routine duties and focusing their efforts on activities that require mandatory human intervention. The automation of processes in Customs is undoubtedly associated with the risk of reducing the number of employees in Customs administrations due to the displacement of the human factor by "smart" computer systems.

- **Automated data exchange**

The timely data exchange is of crucial importance not only for the national Customs administrations of the Member States but also for DG TAXUD, which is responsible for the proper functioning of the Customs Union. The customs territory of the EU is made up of the territories of the Member States and, in practice, goods are often brought into or out of one Member State while the customs declaration is triggered in another. That is why it is particularly important that information is transmitted on time and is accurate and complete. This need is ensured by the organised automatic exchange of data in real time between the different European Customs offices, which, among other things, minimises cases of delay or information loss. The exchange of information also helps European Customs authorities to work more closely with each other, share experiences and best practices, and undertake joint control actions in international operations to prevent fraud, smuggling of goods, drug trafficking, etc.

The main challenge here is the connectivity of the different Customs information systems of the Member States and ensuring their continuity. Customs should follow the same business models, despite the existing differences in the architecture, interface and functionalities of their systems.

- **Data processing, analysis and storage**

A significant number of customs declarations for the import, export or transit of goods are processed every day in the EU. This means that the Union is dealing with a huge amount of information that needs to be processed and analysed accurately to carry out effective customs controls. A good example of this is the risk analysis that is carried out before the entry/exit of goods from the customs territory of the Union and, based on the results obtained, additional control actions can be taken for consignments that carry a higher risk of irregularities. In this respect, digitalization in Customs control provides great opportunities for collecting, processing and storing a range of data for adequate risk analysis. Thanks to the digitalization of Customs, it is now possible to process the flow of goods quickly while at the same time carrying out effective control and ensuring the protection and safety of European citizens, businesses and the environment, as well as protecting the financial interests of the EU and its Member States. The processing of "big data" allows for in-depth analysis of several indicators that can help shape future strategies for the development of European Customs.

The biggest challenge in collecting and handling large amounts of data is the possibility of unauthorized access, which can lead to intentional manipulation or theft. The Member States and DG TAXUD should therefore spare no expense in implementing adequate measures against cyber-attacks. At the same time, it is also important to ensure the "internal security" of data to prevent unauthorised actions by Customs officials themselves.

- **Implementation of innovative digital solutions such as artificial intelligence, Internet of Things, blockchain, etc.**

The implementation of advanced digital solutions such as Artificial Intelligence (AI), Internet of Things (IoT) and blockchain technologies can take the digitalization of customs control to a new, higher level. For example, in the functionality of the Import Control System (ICS2, phase 2), the use of AI is a fact, but the actual results of its operation will be visible at a later stage (the system is self-learning). In turn, IoT can provide great benefits for real-time tracking of cargo in transit and thus prevent abuse and smuggling. In turn, blockchain technology could provide the possibility of comprehensive traceability of data changes in Customs information systems or warehousing and accounting programmes of Authorised Economic Operators (AEOs) to prevent intentional manipulation of relevant information. These innovative digital solutions bring great potential opportunities for the development of digitalisation in customs control, but all the risks and challenges that their use could bring should also be assessed in advance.

The digitalization of European Customs is not an easy process, which requires synchronisation of actions in this direction by all Member States and the EC and its future development is related to the investment of great efforts and financial resources. At the same time, the achievement of the main objectives set out in the UCC for Customs - to ease formalities for legitimate businesses and to implement effective customs control to protect citizens, the economy and the environment - would not be possible without bringing digital transformation to the forefront and finding effective and efficient solutions to address all the challenges.

## FINAL NOTES

*By Assoc. Prof. Dr. Momchil Antov, Head of the Customs Control Club*

For the second year in a row, we managed to find enthusiasts among our students to talk about Customs at a higher level, increasing their mandatory knowledge of the course material. The topic of digitalization was a natural extension of our work last year, as the future of Customs is undoubtedly digital. Of course, we paid attention to all the positive aspects of this process, but we did not underestimate the possible difficulties and challenges that accompany it. Young people understand all this well, their thinking is digitally oriented and I am convinced that as future customs professionals, they will fit in very well in this environment.

---

[1] Summary essay from the first year "[Customs Control Club: What customs should not be, what customs is today, and what customs should be tomorrow?](#)", CCRM Issue 15, 2022



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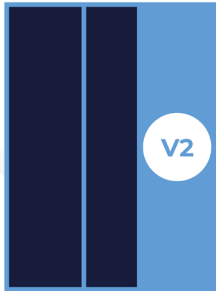
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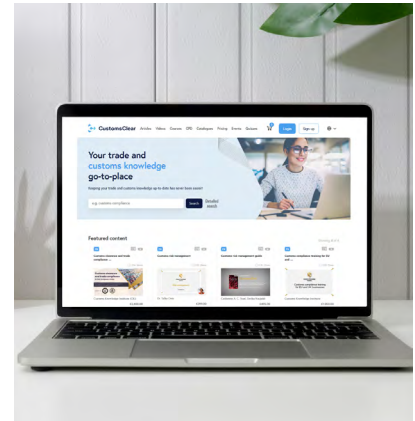


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